APPENDIX A

ORDER OF SUPREME COURT OF APPEALS OF WEST VIRGINIA DENYING PETITIONERS' APPEAL

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 24th day of May, 1965, the following order was made and entered, to-wit:

John Thomas, et al.

vs.

Consolidation Coal Company, a corporation, (Pocahontas Fuel Company Division), and George J. Titler, et al.

On a former day, to-wit, May 11, 1965, came the petitioners, John Thomas, William McCoy, John Salters, Isaac Sizemore, Ray Trantham, Ellis Coleman, Jr., Lee Looney, John Yates and Charles Taylor, by D. Grove Moler, their attorney, and presented to the Court their petition praying for an appeal from a judgment of the Circuit Court of Wyoming County rendered in this action on the 8th day of March, 1965, with the record therein accompanying the petition, and note of argument in support thereof, which being seen and inspected by the Court the appeal prayed for is refused.

A True Copy

Attest: /s/ Kenneth E. Hines
Clerk Supreme Court of Appeals

APPENDIX B

BODY OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT FILED BY RESPONDENT, CONSOLIDATION COAL COMPANY, IN THE DISTRICT COURT

(Record, page 15-16)
(caption omitted)

MOTION TO DISMISS PLAINTIFFS' COMPLAINT

The defendant, Consolidation Coal Company, a corporation, by its counsel, moves this Court to dismiss the action against the defendant, Consolidation Coal Company, a corporation, for the following reasons:

(1) The Complaint fails to state a claim against the defendant, Consolidation Coal Company, a corporation, upon which relief can be granted.

(2) Plaintiffs state their right to be under Chapter 120, Title III, Section 301, 61 Statutes 156; 29 U.S.C.A. 185(a), and the cause of action upon which said plaintiffs' Complaint and suit are based, if any there be, arose on January 2, 1963, and therefore said cause of action did not accrue within two years next immediately preceding the commencement of this action.

(3) Plaintiffs heretofore, on the 21st day of February, 1964, instituted a suit in the Circuit Court of Wyoming County against the same defendants named herein, including this defendant, Consolidation Coal Company, a corporation, which suit was for the same cause of action and was based upon the same agreement and contracts mentioned herein in plaintiffs' Complaint; that in said suit judgment was entered for the defendants, including the defendant, Consolidation Coal Company, a corporation, by said Circuit Court of Wyoming County; and, that the Supreme Court of Appeals of

West Virginia has refused to grant to the plaintiffs an appeal or writ of error from said judgment. Therefore, the matters asserted in the plaintiffs' Complaint have previously been authoritatively, finally and judicially settled by the judgment heretofore entered in favor of the defendant in the said Circuit Court of Wyoming County.

CONSOLIDATION COAL COMPANY,

a corporation